

FIRST REGULAR SESSION

HOUSE BILL NO. 271

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FAITH (Sponsor), SMITH (14), JONES (89), ZERR,
DOUGHERTY, FUNDERBURK, GRISAMORE AND DIEHL (Co-sponsors).

0948L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 227.107, RSMo, and to enact in lieu thereof one new section relating to the authority to enter into design-build highway project contracts.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 227.107, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.107, to read as follows:

227.107. 1. Notwithstanding any provision of section 227.100 to the contrary, as an alternative to the requirements and procedures specified by sections 227.040 to 227.100, the state highways and transportation commission is authorized to enter into highway design-build project contracts. The authority granted to the state highways and transportation commission by this section shall be limited to a total of three design-build project contracts. Two design-build projects authorized by this section shall be selected by the highways and transportation commission from 1992 fifteen year plan projects. Authority to enter into design-build projects granted by this section shall expire on July 1, 2012, unless extended by statute or upon completion of three projects, whichever is first.

2. **In addition to the three design-build highway project contracts authorized in subsection 1 of this section, the state highways and transportation commission is authorized to enter into an additional design-build highway project contract for the design, construction, reconstruction, or improvement of Missouri Route 364 as contained in any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants and any county with a charter form of government and with more than one million inhabitants. The authority to enter**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **into a design-build highway project contract under this subsection shall not be subject to**
18 **the time limitation expressed in subsection 1 of this section.**

19 **3.** For the purpose of this section a "design-builder" is defined as an individual,
20 corporation, partnership, joint venture or other entity, including combinations of such entities
21 making a proposal to perform or performing a design-build highway project contract.

22 [3.] **4.** For the purpose of this section, "design-build highway project contract" is defined
23 as the procurement of all materials and services necessary for the design, construction,
24 reconstruction or improvement of a state highway project in a single contract with a
25 design-builder capable of providing the necessary materials and services.

26 [4.] **5.** For the purpose of this section, "highway project" is defined as the design,
27 construction, reconstruction or improvement of highways or bridges under contract with the state
28 highways and transportation commission, which is funded by state, federal or local funds or any
29 combination of such funds.

30 [5.] **6.** In using a design-build highway project contract, the commission shall establish
31 a written procedure by rule for prequalifying design-builders before such design-builders will be
32 allowed to make a proposal on the project.

33 [6.] **7.** In any design-build highway project contract, whether involving state or federal
34 funds, the commission shall require that each person submitting a request for qualifications
35 provide a detailed disadvantaged business enterprise participation plan. The plan shall provide
36 information describing the experience of the person in meeting disadvantaged business enterprise
37 participation goals, how the person will meet the department of transportation's disadvantaged
38 business enterprise participation goal and such other qualifications that the commission considers
39 to be in the best interest of the state.

40 [7.] **8.** The commission is authorized to issue a request for proposals to a maximum of
41 five design-builders prequalified in accordance with subsection 5 of this section.

42 [8.] **9.** The commission may require approval of any person performing subcontract
43 work on the design-build highway project.

44 [9.] **10.** The bid bond and performance bond requirements of section 227.100 and the
45 payment bond requirements of section 107.170, RSMo, shall apply to the design-build highway
46 project.

47 [10.] **11.** The requirements of subsection 9 of this section may be modified by the
48 commission for any design-build highway project contract which is designated by the
49 commission as a "design-build-finance-maintain" project, and for which the contract with the
50 design-builder exceeds twenty-five years. For such projects, the commission shall require the
51 design-builder to provide, or cause to be provided by the construction entity or entities providing
52 construction services under contract to the design-builder directly, such bonds, or such other

53 security, in such terms, durations, and amounts as the commission may determine to be adequate
54 for its protection and provided by a surety, sureties, or financial institution or institutions
55 satisfactory to the commission, including but not limited to:

56 (1) A bid or proposal bond, or other security authorized under subsection 2 of section
57 227.100, in an amount of not less than five million dollars;

58 (2) A performance bond or bonds for the construction period specified in the
59 design-build highway project contract in an aggregate amount of not less than two hundred
60 million dollars or twenty-five percent of a reasonable estimate of the cost of construction work,
61 whichever amount is lower, except the commission may allow other security in lieu of or in
62 addition to any bond or bonds, including but not limited to letters of credit or other negotiable
63 instruments, such other or additional security to be on such terms, for such durations, and in such
64 amounts as the commission may determine to be adequate for the protection of the commission,
65 and to be provided by sureties or financial institutions satisfactory to the commission; and

66 (3) A payment bond or bonds that shall be enforceable under section 522.300, RSMo,
67 for the protection of persons supplying labor and material in carrying out the construction work
68 provided for in the design-build highway project contract. The aggregate amount of the payment
69 bond or bonds shall equal a reasonable estimate of the total amount payable for the cost of
70 construction work under the terms of the design-build highway project contract unless the
71 commission determines in writing supported by specific findings that a payment bond or bonds
72 in such amount is impractical, in which case the commission shall establish the amount of the
73 payment bond or bonds; except that the amount of the payment bond or bonds shall not be less
74 than the aggregate amount of the performance bond or bonds and the additional security to such
75 performance bond or bonds, or in the amount of the other security used in lieu of the
76 performance bond or bonds.

77 [11.] **12.** The commission is authorized to prescribe the form of the contracts for the
78 work.

79 [12.] **13.** The commission is empowered to make all final decisions concerning the
80 performance of the work under the design-build highway project contract, including claims for
81 additional time and compensation.

82 [13.] **14.** The provisions of sections 8.285 to 8.291, RSMo, shall not apply to the
83 procurement of architectural, engineering or land surveying services for the design-build
84 highway project, except that any person providing architectural, engineering or land surveying
85 services for the design-builder on the design-build highway project must be licensed in Missouri
86 to provide such services.

87 [14.] **15.** The commission shall pay a reasonable stipend to prequalified responsive
88 design-builders who submit a proposal, but are not awarded the design-build highway project.

89 [15.] **16.** The commission shall comply with the provisions of any act of congress or any
90 regulations of any federal administrative agency which provides and authorizes the use of federal
91 funds for highway projects using the design-build process.

92 [16.] **17.** The commission shall promulgate administrative rules to implement this
93 section or to secure federal funds. Such rules shall be published for comment in the Missouri
94 Register and shall include prequalification criteria, the make-up of the prequalification review
95 team, specifications for the design criteria package, the method of advertising, receiving and
96 evaluating proposals from design-builders, the criteria for awarding the design-build highway
97 project based on the design criteria package and a separate proposal stating the cost of
98 construction, and other methods, procedures and criteria necessary to administer this section.

99 [17.] **18.** The commission shall make a status report to the members of the general
100 assembly and the governor following the award of the design-build project, as an individual
101 component of the annual report submitted by the commission to the joint transportation oversight
102 committee in accordance with the provisions of section 21.795, RSMo. The annual report prior
103 to advertisement of the design-build highway project contracts shall state the goals of the project
104 in reducing costs and/or the time of completion for the project in comparison to the
105 design-bid-build method of construction and objective measurements to be utilized in
106 determining achievement of such goals. Subsequent annual reports shall include: the time
107 estimated for design and construction of different phases or segments of the project and the
108 actual time required to complete such work during the period; the amount of each progress
109 payment to the design-builder during the period and the percentage and a description of the
110 portion of the project completed regarding such payment; the number and a description of design
111 change orders issued during the period and the cost of each such change order; upon substantial
112 and final completion, the total cost of the design-build highway project with a breakdown of
113 costs for design and construction; and such other measurements as specified by rule. The annual
114 report immediately after final completion of the project shall state an assessment of the
115 advantages and disadvantages of the design-build method of contracting for highway and bridge
116 projects in comparison to the design-bid-build method of contracting and an assessment of
117 whether the goals of the project in reducing costs and/or the time of completion of the project
118 were met.

119 [18.] **19.** The commission shall give public notice of a request for qualifications in at
120 least two public newspapers that are distributed wholly or in part in this state and at least one
121 construction industry trade publication that is distributed nationally.

122 [19.] **20.** The commission shall publish its cost estimates of the design-build highway
123 project award and the project completion date along with its public notice of a request for
124 qualifications of the design-build project.

125 [20.] **21.** If the commission fails to receive at least two responsive submissions from
126 design-builders considered qualified, submissions shall not be opened and it shall readvertise the
127 project. ✓